

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Union Pacific Railroad
Wallace-Mullan Branch
Northern Idaho

Union Pacific Railroad Company, Inc.,
Respondent

UNILATERAL ADMINISTRATIVE
ORDER FOR RESPONSE ACTIONS

U.S. EPA Region 10
CERCLA Docket No.

CERCLA-10-99-0234

Proceeding Under Section 106(a) of
the Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended, 42 U.S.C.
§ 9606(a)

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2 I. JURISDICTION AND GENERAL PROVISIONS

3 1. This order is issued pursuant to the authority vested in the President of the United States
4 by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act
5 of 1980, 42 U.S.C. § 9606(a), as amended, ("CERCLA"), and delegated to the Administrator of the
6 United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January
7 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrator of EPA
8 Region 10 by EPA Delegation Nos. 14-14-A and 14-14-B, and further redelegated to the Director of
9 the EPA Region 10 Office of Environmental Cleanup through delegation No. R10 14-14-B.

10 2. This Order pertains to property located within the railroad right-of-way ("ROW") owned
11 or controlled by the Union Pacific Railroad Company, Inc. ("UPRR" or "Respondent") and known as
12 the Wallace-Mullan Branch. The ROW extends approximately 71.5 miles from Plummer to Mullan,
13 Idaho, through the counties of Benewah, Kootenai, and Shoshone, and the Reservation of the Coeur
14 d'Alene Indian Tribe. This Order requires the Respondent to conduct removal actions and pay
15 oversight costs described herein to abate an imminent and substantial endangerment to the public
16 health, welfare, or the environment that may be presented by the actual or threatened release of
17 hazardous substances at or from the ROW. The requirements of this Order may be superseded by
18 the requirements of a consent decree that is the subject of present negotiations among the United
19 States, the State of Idaho, the Coeur d'Alene Tribe, and Respondent. The precise effect of such
20 consent decree on this Order will be defined by later writing. In the interim before entry of such
21 consent decree, this Order requires limited efforts by Respondent to begin implementing the
22 response actions identified for the ROW and to assure Respondent's preparedness to implement the
23 full range of response actions identified for the ROW through an Engineering Evaluation/Cost
24 Analysis dated January 15, 1999 and conducted pursuant to the NCP at 300.415(b)(4)(i).

25 3. EPA has notified the Coeur d'Alene Tribe and the State of Idaho of this action pursuant to
26 Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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2 II. PARTIES BOUND

3 4. This Order applies to and is binding upon Respondent and Respondent's successors and
4 assigns. Any change in ownership or corporate status of Respondent, including, but not limited to,
5 any transfer of assets or real or personal property, shall in no way alter such Respondent's
6 responsibilities under this Order.

7 5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a
8 copy of this Order and comply with this Order. Respondent shall be responsible for any
9 noncompliance with this Order.

10 III. DEFINITIONS

11 6. Unless otherwise expressly provided herein, terms used in this Order which are defined in
12 CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in
13 CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the
14 attachments hereto and incorporated hereunder, the following definitions shall apply:

- 15 A. "CERCLA" shall mean the Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et
17 seq.;
- 18 B. "Concentrates" shall mean an accumulation of unconsolidated metal-bearing
19 materials, with metal content concentrated through a milling process, visibly
20 identifiable at various locations within the ROW.
- 21 C. "Construction Oversight Costs" shall mean all costs incurred by the
22 Government Project Coordinator and others designated by the Government
23 Project Coordinator, in the course of overseeing and advising the design and
24 implementation of the Work.
- 25 D. "Day" shall mean a calendar day unless expressly stated to be a working day.
26 "Working day" shall mean a day other than a Saturday, Sunday, or federal
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2 holiday. In computing any period of time under this Order, where the last day
3 would fall on a Saturday, Sunday, or federal holiday, the period shall run until
4 the close of business of the next working day;

5 E. "EE/CA" shall mean the Engineering Evaluation/Cost Analysis prepared for
6 the Union Pacific Railroad Wallace-Mullan Branch, dated January 15, 1999,
7 and incorporated by reference herein;

8 F. "EPA" shall mean the United States Environmental Protection Agency and
9 any successor departments or agencies of the United States;

10 G. "Future Response Costs" shall mean all costs, including, but not limited to,
11 direct and indirect costs, that the EPA incurs after September 30, 1999, in
12 reviewing or developing plans, reports, and other items pursuant to this Order,
13 verifying the Work, or otherwise implementing, overseeing, or enforcing this
14 Order, including, but not limited to, payroll costs, contractor costs, travel
15 costs, laboratory costs, Construction Oversight Costs, costs related to
16 Paragraph 27 (Access) (including, but not limited to, the cost of attorney time
17 and any monies paid to secure access and/or to secure or implement
18 institutional controls), and costs related to Paragraph 31 (Emergency
19 Response). Future Response Costs shall also include all Interest on the Past
20 Response Costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21 H. "Government Project Coordinator" shall mean the individual so designated
22 by EPA, the State, and the Tribe to provide advice and oversight on behalf of
23 the Governments over Respondent and Respondent's agent, contractors,
24 subcontractors, and representatives. The duties of the Government Project
25 Coordinator ("GPC") shall include, but not be limited to, document review,
26 schedule review, construction oversight, field design change consultation and
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1 review, quality assurance review, and quality assurance sampling. The GPC
2 shall have the authority, as identified by interagency agreement with the
3 Governments, to provide direction to Respondent's Supervising Contractor
4 consistent with the EE/CA and this Order.

5 I. "Governments" shall mean the United States, State, and Tribe, and agencies
6 thereof.

7 J. "Interest" shall mean interest at the rate specified for interest on investments
8 of the Hazardous Substance Superfund established under Subchapter A of
9 Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each
10 year, in accordance with 42 U.S.C. § 9607(a);

11 K. "National Contingency Plan" or "NCP" shall mean the National Oil and
12 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
13 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300,
14 and any amendments thereto;

15 L. "Order" shall mean this Unilateral Administrative Order, as may be modified,
16 and all documents attachments hereto or as may be attached upon approval by
17 EPA. In the event of conflict between this Order and any attachment, this
18 Order shall control;

19 M. "Paragraph" shall mean a portion of this Order identified by an Arabic
20 numeral or an upper case letter;

21 N. "Past Response Costs" shall mean all costs, including, but not limited to,
22 direct and indirect costs, and Construction Oversight Costs, that the United
23 States paid at or in connection with the ROW through September 30, 1999,
24 excluding costs incurred in connection with Consent Decree No. CV 95-0152-
25 N-HLR;

26 O. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§
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1 6901, et seq. (also known as the Resource Conservation and Recovery Act);

2 P. "State" shall mean the State of Idaho or agencies thereof, including the Idaho
3 Division of Environmental Quality ("IDEQ") and Idaho Parks and Recreation
4 Department, and any successor departments or agencies of the State;

5 Q. "Supervising Contractor" shall mean the principal contractor retained by the
6 Respondent to supervise and direct the implementation of the Work under this
7 Order;

8 R. "Tribe" shall mean the Coeur d'Alene Tribe.

9 S. "United States" shall mean the United States of America;

10 T. "Work" shall mean all activities Respondent is require to perform under this
11 Order, except those required by Paragraph 28 (Record Retention).

12 IV. FINDINGS OF FACT

13 7. Between the 1890s and 1992, Respondent provided continuous rail transport over
14 segments of the Wallace-Mullan Branch (identified hereafter as the "right-of-way" or "ROW"). The
15 ROW consists of the eastern end of the Wallace Branch and the entire Mullan Branch. The Wallace
16 Branch portion extends for 63.8 miles, from approximately Milepost 16.6 at Plummer Junction to
17 Milepost 80.4 in Wallace. The Mullan Branch extends 7.6 miles from Milepost 0 at Wallace
18 (coincident with the eastern terminus of the Wallace Branch) to the east side of Mullan at
19 Milepost 7.6. The western end of the ROW begins in Benewah County, west of Coeur d'Alene
20 Lake, crosses Coeur d'Alene Lake via a 3,179-foot trestle bridge, enters Kootenai County, proceeds
21 north along the eastern edge of the Lake through the Coeur d'Alene Indian Tribe Reservation, then
22 turns east, following the main stem of the Coeur d'Alene River, and then following the South Fork
23 of the Coeur d'Alene River to the eastern terminus of the ROW at Mullan. Between Plummer and
24 Mullan, the ROW passes through a number of residential communities, including Harrison, Rose
25 Lake, Cataldo, Osburn, and Wallace. The ROW also passes through and past numerous lakes,
26 marshes, and other sensitive ecosystems, including Anderson Lake, Swan Lake, Cave Lake, and
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1 Lane Marsh. These lakes and marshes provide habitat for fish, mammals, raptors, and waterfowl,
2 and support populations of federally recognized endangered species including the bald eagle and bull
3 trout.

4 8. Construction of the Wallace Branch took place between 1888 and 1890. The branch line
5 was constructed and operated by the Washington & Idaho Railroad Company, a predecessor to the
6 Oregon-Washington Railroad and Navigation Co., which later became part of Respondent. In the
7 1890s, the Mullan Branch was constructed by the Northern Pacific Railway Company, which in the
8 1960s became Burlington-Northern Inc. The Mullan Branch was purchased by Respondent in 1980.

9 9. For some segments of the ROW, particularly along the South Fork of the Coeur d'Alene
10 River, the track bed was constructed over fluviially deposited mill tailings. Additionally, some
11 segments of the ROW in this area were constructed over locally available mine waste rock used as
12 fill. Materials originally used to construct the ballast section of the rail line throughout the ROW
13 consisted of a mixture of mill tailings, waste rock, and locally available gravels.

14 10. During its decades of operation, the ROW primarily served the mining industry,
15 transporting ores and concentrated materials from mining and milling operations. Rail sidings were
16 built to serve mining facilities, saw mills, rock quarries, warehouses, fueling stations, and
17 maintenance facilities. Concentrates have been discovered within the ROW and particularly within
18 the siding areas where loading and handling of mining materials resulted in spillage.

19 11. Mill tailings, waste rock, and concentrates within the ROW contain high levels of metals
20 including arsenic, cadmium, lead, and zinc. Such metals are hazardous substances, as defined by
21 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and the NCP at 40 C.F.R. Part 302.4. Data on
22 the concentrations of such hazardous substances in soils within the ROW are provided in Tables 2-1
23 through 2-5 of the EE/CA.

24 12. Exposures to arsenic, cadmium, lead, and zinc are known or suspected to cause a variety
25 of adverse health and environmental effects, as described below:

26 A. Arsenic. Exposure to arsenic has been linked to increased incidence of human

1 lung and skin cancer. Chronic arsenic exposure can produce malaise, fatigue, changes in skin
2 pigmentation, and gastrointestinal disturbances. Acute exposure to certain arsenic compounds can
3 be fatal.

4 B. Cadmium. Cadmium has been demonstrated to cause cancer in animals. Animal
5 carcinogens are suspected human carcinogens. Cadmium may also be a mutagen (causes changes in
6 genes or organisms that are perpetuated in subsequent cell divisions which produce offspring of the
7 organism). Cadmium can cause sterility in animals and can adversely affect the kidneys, bones,
8 liver, reproductive system, respiratory tract, and immune system. Cadmium has been reported to
9 cause hypertension in animals. It can interact with other metals, such as copper, iron, and zinc, and
10 can cause symptoms associated with their deficiency such as anemia. Cadmium can accumulate in
11 the kidneys and liver of animals.

12 C. Lead. Exposure to lead can cause severe health impacts, particularly in small
13 children and fetuses. Children at play are at greatest risk of exposure because children are most
14 likely to inhale or ingest soil particles. High exposures to lead may result in convulsions or death.
15 Children exposed to lower levels of lead may have permanent effects such as decreased IQ, impaired
16 hearing, and reduced growth. In adults, lead exposure may affect memory, decrease reaction time,
17 and damage the male reproductive system.

18 D. Zinc. Although small amounts of zinc are essential to many forms of life, zinc is
19 known to be toxic at elevated levels to a number of animal species, including humans. Fish are
20 notably sensitive to elevated concentrations of zinc. Zinc readily dissolves in water, and can be
21 readily transported by the movement of surface or ground water .

22 13. As part of the EE/CA for the ROW, a Streamlined Risk Assessment was developed to
23 evaluate the potential risk to human health from exposure to the metals identified above. See
24 EE/CA Appendix A. The Streamlined Risk Assessment assumes a future land use of the ROW as a
25 recreational trail. Within this anticipated future land use, three exposure scenarios were identified:
26 residential; child and adult recreational; and adult occupational. The residential exposure scenario
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1 recognizes that the ROW passes through a number of residential communities, including, for
2 example, the town of Wallace, where nearly 1000 people live within one mile of the ROW. The
3 recreational exposure scenario anticipates children and adults using the ROW in the future as a
4 recreational trail. The adult occupation exposure scenario anticipates the future need for workers to
5 maintain the recreational trail. Within each of these three scenarios, anticipated exposures through
6 soil ingestion were determined to be unacceptably high under a "No Action" alternative.

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8 14. In developing the EE/CA and related technical documents, a number of field inspections
9 of the ROW were conducted. During these field inspections, and through other sources of
10 information, several specific areas, including particular wetlands, within or adjacent the ROW were
11 identified where railroad ties, tracks, and other track materials had been disposed improperly.
12 Railroad ties and other debris may often be contaminated with hazardous substances including those
13 metals identified in Paragraph 12. The improper disposal of contaminated railroad ties and other
14 debris into wetlands and other areas in or adjacent the ROW thus presents the possibility of exposing
15 hazardous substances to human and ecological receptors.

16 15. A segment of the ROW, approximately 7.9 miles, crosses an area known as the "Bunker
17 Hill Superfund Site." This segment of the ROW is being addressed through remedial actions
18 selected in a CERCLA Record of Decision, issued by EPA and the State in 1992. Remedial actions
19 on this segment of the ROW are being implemented by Respondent pursuant to a consent decree
20 entered by EPA, the State, and Respondent in 1995. The EE/CA and this Order do not address this
21 segment of the ROW.

22 16. In order to protect human health along the ROW outside the Bunker Hill Superfund Site,
23 the EE/CA recommends that a number of response actions be taken. These response actions include
24 the following: removal of ballast and concentrates; removal of tracks, ties, and other track materials;
25 removal of soils and sediments from areas where tracks, ties, and other track materials had been
26 improperly disposed; placement of a ten-foot wide asphalt barrier over the former rail bed;
27 placement of clean gravels and soils over rail bed shoulders, within and around residential areas, and

1 in areas designated as clean "oases"; creation, distribution, and placement of educational or
2 informational materials; and operation and maintenance of the recreational trail. Based on available
3 information, implementation of these response actions is expected to protect human health from
4 possible exposures to metals presently located within the ROW and is expected to contribute to the
5 efficient performance of any long-term remedial actions within or adjacent the ROW.

6 V. CONCLUSIONS OF LAW AND DETERMINATIONS

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8 17. Based on the Findings of Fact set forth above, and the Administrative Record supporting
9 these response actions, EPA determines that:

- 10 A. The ROW is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C.
11 § 9601(9).
- 12 B. Substances found in the ROW, including the metals identified in the Findings
13 of Fact above, constitute "hazardous substances" as defined by Section
14 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- 15 C. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42
16 U.S.C. § 9601(21).
- 17 D. Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
18 as provided below:
 - 19 a. Respondent is the present "owner" and/or "operator" of the facility, as
20 defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and
21 within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §
22 9607(a)(1).
 - 23 b. Respondent was an "owner" and/or "operator" of the facility at the
24 time of disposal of any hazardous substances described in this section
25 at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §
26 9601 (20), and within the meaning of Section 107(a)(2) of CERCLA,
27 42 U.S.C. § 107(a)(2).

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- c. Respondent arranged for disposal or treatment, or arranged for transport for disposal or treatment of hazardous substances at the facility, by any other party, at any facility, and within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607 (a)(3).
 - d. Respondent accepts or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9707(a)(4).
- E. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- F. The conditions present in the ROW constitute an imminent and substantial endangerment to public health, welfare, or the environment. These factors include, but are not limited to, the following:
- a. actual or potential exposure of nearby human populations, animals, and aquatic organisms to hazardous substances;
 - b. actual or potential contamination of sensitive ecosystems;
 - c. elevated concentrations of hazardous substances in soils largely at or near the surface, that may migrate;
 - d. the anticipated future use of the ROW as a recreational trail, drawing children and adults to remote areas with high concentrations of contaminants.
- G. The actual or threatened release of hazardous substances within and from the ROW may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
- H. The response actions required by this Order are necessary to protect the public

1 health, welfare, or the environment, are not inconsistent with the NCP and
2 CERCLA, and are expected to contribute to the efficient performance of any
3 long-term remedial actions within or with respect to the ROW.
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5 VI. ORDER

6 18. Based upon the foregoing Findings of Fact, Conclusions of Law, and the Administrative
7 Record for the ROW, EPA hereby orders that Respondent comply with the provisions of this Order,
8 including, but not limited to, the provisions of this Section, all attachments to this Order, and all
9 documents incorporated by reference into this Order.

10 19. Notice of Intent to Comply. Respondent shall notify EPA, in writing, within five days
11 after the effective date of this Order of Respondent's irrevocable intent to comply with this Order.
12 If a conference is requested, Respondent shall provide written notice of intent to comply within five
13 days following the conference, unless this Order is modified in writing by EPA. Failure of
14 Respondent to provide such notification within these time periods shall be a violation of this Order
15 by Respondent.

16 20. Designation of Contractor, Project Coordinator, and On-Scene Coordinator
17 Respondent shall perform the work itself or retain contractors to perform the response actions.
18 Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of such
19 contractors within 30 days of the effective date of this Order. Respondent shall also notify EPA of
20 the name and qualifications of any other contractors or subcontractors retained to perform the
21 response action under this Order at least five days prior to commencement of such response action.
22 EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by
23 the Respondent, or of Respondent's choice of itself to do the response action. If EPA disapproves of
24 a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that
25 it will perform the response action itself within five days following EPA's disapproval and shall
26 notify EPA of that contractor's name or Respondent's name and qualifications within five days of
27 EPA's disapproval.

1 21. Within ten days after the effective date of this Order, the Respondent shall designate a
2 Project Coordinator who shall be responsible for administration of all the Respondent's actions
3 required by the Order. Respondent shall submit the designated coordinator's name, address,
4 telephone number, and qualifications to EPA. To the greatest extent possible, the Project
5 Coordinator shall be present on ROW or readily available during ROW work. EPA retains the right
6 to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a
7 selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify
8 EPA of that person's name and qualifications within five days following EPA's disapproval.
9 Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to
10 this Order shall constitute receipt by Respondent.

11 22. EPA has designated Earl Liverman of the EPA's Coeur d'Alene Field Office as its On-
12 Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the
13 OSC at the following address:
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15 Earl Liverman
16 EPA Region 10 Coeur d'Alene Field Office
17 1910 Northwest Blvd. Suite 208
 Coeur d'Alene, ID 83814

18 23. Concentrates Removal. Respondent shall remove concentrates from wherever found at
19 various locations along the ROW, in accordance with a Concentrates Accumulation Removal (CAR)
20 Work Plan approved by EPA, and provide for the proper disposal of such concentrates, in
21 accordance with such Work Plan. The CAR Work Plan dated August 13, 1999, shall be revised and
22 submitted to EPA for approval within 7 days of the effective date of this Order, if such revised CAR
23 Work Plan has not already been submitted by Respondent before the effective date of this Order. If
24 such revised CAR Work Plan is not approved by EPA, Respondent shall revise such Work Plan in
25 accordance with EPA's comments, and resubmit the latest revised draft for EPA's approval. The
26 approved CAR Work Plan shall include a schedule for initiating on-site construction activities.

Respondent shall implement the approved CAR Work Plan according to the provisions of such Work Plan, and such Work Plan shall be considered an attachment to, and thus a part of, this Order.

24. Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain-of-custody procedures as are specified in American National Standard ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," EPA QA/R-5, "EPA Requirements for Quality Assurance Project Plans and EPA QA/G-5." Respondent shall ensure that the laboratory used to perform analyses participates in a QA/QC program that complies with American National Standard ANSI/ASQC E4-1994. A Quality Assurance Project Plan which conforms to the EPA requirements stated in EPA QA/R-5 shall be prepared and approved by the Respondent for each sampling and analysis event associated with this Order.

25. Reporting

A. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order by the 14th day of every month until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

B. Respondent shall, at least 30 days prior to the conveyance of any interest in real property within the ROW, give written notice of this Order to the prospective transferee and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent shall require that the transferee comply with Paragraph 27 of this Order - Access to Property and Information.

1 26. Final Report. Within 30 days after completion of all response actions required under this
2 Order, the Respondent shall submit for EPA review and approval a final report summarizing the
3 actions taken to comply with this Order. The final report shall conform, at a minimum, with the
4 requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall
5 include a good faith estimate of total costs or statement of actual costs incurred in complying with
6 the Order, a listing of quantities and types of materials removed, a discussion of removal and
7 disposal options considered for those materials, a listing of the ultimate destinations of those
8 materials, a presentation of the analytical results of all sampling and analyses performed, and
9 accompanying appendices containing all relevant documentation generated during the response
10 action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the
11 following certification signed by a person who supervised or directed the preparation of that report:

12 Under penalty of law, I certify that to the best of my knowledge, after appropriate
13 inquiries of all relevant persons involved in the preparation of the report, the
14 information submitted is true, accurate, and complete. I am aware that there are
15 significant penalties for submitting false information, including the possibility of fine
16 and imprisonment for knowing violations.

17 27. Access to Property and Information

18 A. Respondent shall provide and/or obtain access to the ROW and appropriate off-
19 ROW areas to which access is necessary to implement this Order, and provide access to all records
20 and documentation related to the conditions at the ROW and the action conducted pursuant to this
21 Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees,
22 representatives, and State of Idaho and Coeur d'Alene Tribe representatives. These individuals shall
23 be permitted to move freely about the ROW and appropriate off-ROW areas in order to conduct
24 actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the
25 results of all sampling or tests and all other data generated by Respondent or its contractors, or on the
26 Respondent's behalf during implementation of this Order.

27 B. Where action under this Order is to be performed in areas owned by or in
28 possession of someone other than Respondent, Respondent shall use its best efforts to obtain all

1 necessary access agreements within 45 days after the effective date of this Order, or as otherwise
2 specified, in writing, by the OSC. Respondent shall immediately notify EPA if after using its best
3 efforts it remains unable to obtain such agreements. Respondent shall describe, in writing, its efforts
4 to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to
5 effectuate the response activities described herein, using such means as EPA deems appropriate.
6 EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees
7 incurred by the United States in obtaining access for Respondent.

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9 **28. Record Retention, Documentation, Availability of Information**

10 A. Respondent shall preserve all documents and information relating to work
11 performed under this Order, or relating to the hazardous substances found on or released from the
12 ROW, for ten years following completion of the response actions required by the Order. At the end
13 of this ten year period and before any document or information is destroyed, Respondent shall notify
14 EPA that such documents and information are available to EPA for inspection, and, upon request,
15 shall provide the originals or copies of such documents and information to EPA. In addition,
16 Respondent shall provide documents and information retained under this section at any time before
17 expiration of the ten year period at the written request of EPA.

18 B. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. §
19 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order,
20 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7).
21 Analytical and other data specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F),
22 shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered
23 by a business confidentiality claim to the extent permitted by, and by means of the procedures set
24 forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received
25 by EPA, EPA may make it available to the public without further notice to Respondent.

26 **29. Off-Site Shipments.** All hazardous substances, pollutants, or contaminants removed off-
27 site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at

1 a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised
2 Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11,
3 November 13, 1987. Prior notification of any such out-of-state waste shipments shall be provided to
4 the OSC no less than five days before such shipment commences, consistent with OSWER Directive
5 9330.2-07.

6 30. Compliance with Other Laws. Respondent shall perform all actions required pursuant to
7 this Order in accordance with all applicable local, state, and federal laws and regulations except as
8 provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 CFR § 300.415(j). In
9 accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to
10 the extent practicable, as determined by EPA, considering the exigencies of the situation, attain
11 applicable or relevant and appropriate requirements ("ARARs") under federal environmental, state
12 environmental, or facility siting laws. (See "The Superfund Removal Procedures for Consideration
13 of ARARs During Removal Actions", OSWER Directive 9360.3-02, August 1991.)

14 31. Emergency Response and Notification of Releases

15 A. If any incident, or change in ROW conditions, during the actions conducted
16 pursuant to this Order causes or threatens to cause an additional release of hazardous substances
17 from the ROW or an endangerment to the public health, welfare, or the environment, the Respondent
18 shall immediately take all appropriate action. The Respondent shall take these actions in accordance
19 with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan,
20 in order to prevent, abate, or minimize such release or endangerment caused or threatened by the
21 release. Respondent shall also immediately provide notice of the incident and ROW conditions to
22 the OSC or, if the OSC is unavailable, to the Regional Duty Officer at the 24-hour emergency
23 response phone: (800) 424-8802. If Respondent refuses to take action, then EPA may respond to the
24 release or endangerment and reserve the right to pursue cost recovery.

25 B. In addition, in the event of an actual release of a hazardous substance, Respondent
26 shall immediately notify EPA's OSC at (208) 664-4858 or (208) 660-4114 and the National
27

1 Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven
2 days after each release, setting forth the events that occurred and the measures en or to be taken to
3 mitigate any release or endangerment caused or threatened by the release and to present the
4 reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting
5 under Section 103(c) of CERCLA and Section 304 of the Emergency Planning and Community
6 Right-To-Know Act of 1986, 42 U.S.C. § 11001, et seq.

7 VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

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9 32. The OSC, in consultation with the State and the Tribe, shall be responsible for
10 overseeing the proper and complete implementation of this Order. The OSC shall have the authority
11 vested in an OSC by the NCP, 40 C.F.R. 300.120, including the authority to halt, conduct, or direct
12 any action required by this Order, or to direct any other response action undertaken by EPA or
13 Respondent at the ROW. Absence of the OSC from the ROW shall not be cause for stoppage of
14 work unless specifically directed by the OSC.

15 33. EPA and Respondent shall have the right to change their designated OSC or Project
16 Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA no less than five
17 days before such a change is made. Notification may initially be made orally, but shall be followed
18 promptly by written notice.

19 VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

20 34. Violation of any provision of this Order may subject Respondent to civil penalties of up
21 to \$27,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §
22 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the
23 amount of any cost incurred by the United States as a result of such violation, as provided in Section
24 107(c)(3) of CERCLA, 42 U.S.C. § 9607 (c)(3). Should Respondent violate this Order or any portion
25 hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42
26 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of
27 CERCLA, 42 U.S.C. § 9606.

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IX. REIMBURSEMENT OF COSTS

35. Respondent shall reimburse EPA, upon written demand from EPA, for all Past Response Costs and Future Response Costs incurred by EPA in connection with Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by EPA with respect to this Order. EPA's Superfund Cost Organization Recovery Enhancement System ("SCORES") report, as certified by EPA, shall serve as the basis for payment demands.

36. Within 45 days of receipt of a bill described above, Respondent shall remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund" to the following address:

Mellon Bank
EPA Region 10
Attn: Superfund Accounting
P.O. Box 360903M
Pittsburgh, PA 15251

Respondents shall simultaneously transmit a copy of the check to the following address:

Regional Financial Management Officer
EPA Region 10, OMP-146
1200 Sixth Avenue
Seattle, WA 98101

Payments must be designated as "Response Costs - Union Pacific Railroad Wallace-Mullan Branch" and shall reference the payor's name and address, the EPA site identification number 3D, and the docket number of this Order.

37. Interest at a rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the date of receipt of the original demand notwithstanding any dispute or an objection to any portion of the costs.

X. RESERVATION OF RIGHTS

38. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public

1 health, welfare, or the environment or to prevent, abate or minimize an actual or threatened release
2 of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at or from the
3 ROW. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the
4 terms of this Order, from taking other legal or equitable action as it deems appropriate or necessary,
5 or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA
6 or any other applicable law. EPA reserves the right to bring an action against Respondent under
7 Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the
8 United States related to this Order or the ROW and not reimbursed by Respondent.

9 XI. OTHER CLAIMS

10 39. By issuance of this Order, the United States and EPA assume no liability for injuries or
11 damages to persons or property resulting from any acts or omissions of Respondent. The United
12 States or EPA shall not be deemed a party to any contract entered into by the Respondent or its
13 directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants
14 in carrying out activities pursuant to this Order.

15 40. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of
16 CERCLA, 42 U.S.C. § 9611 (a)(2).

17 41. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause
18 of action against the Respondent or any person not a party to this Order, for any liability such person
19 may have under CERCLA, other statutes, or the common law, including, but not limited to, any
20 claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of
21 CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

22 XII. MODIFICATIONS

23 42. Modifications to any plan or schedule attached to this Order may be made, in writing,
24 by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, in consultation
25 with the State and Tribe, it will be memorialized, in writing, within five days; provided, however,
26 that the effective date of the modification shall be the date of the OSC's oral direction. The rest of
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1 the Order, or any other portion of the Order may only be modified, in writing, by signature of the
2 Director of the EPA Region 10 Office of Environmental Cleanup.

3 43. If Respondent seeks permission to deviate from any approved plan or schedule,
4 Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the
5 proposed modification and its basis.

6 44. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans,
7 specifications, schedules, or any other writing submitted by the Respondent shall relieve the
8 Respondent of its obligations to obtain such formal approval as may be required by this Order, and to
9 comply with all requirements of this Order unless it is formally modified.

10 XIII. NOTICE OF COMPLETION

11 45. When EPA determines, after EPA's review of the Final Report, that all response actions
12 have been fully performed in accordance with this Order, with the expectation of any continuing
13 obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines
14 that any response actions have not been completed in accordance with this Order, EPA will notify
15 the Respondent, provide a list of the deficiencies, and require that Respondent correct such
16 deficiencies. The Respondent shall correct the deficiencies and shall submit a revised Final Report
17 in accordance with the EPA notice. Failure by Respondent to correct the deficiencies shall be a
18 violation of this Order.

19 XIV. ACCESS TO ADMINISTRATIVE RECORD

20 46. The Administrative Record supporting this response action is available for review at the
21 following locations:

22 EPA Region 10 Superfund Records Center
23 1200 Sixth Ave, 7th floor
24 Seattle, Washington, 98101;

25 North Idaho College Library
26 1000 West Garden Avenue
27 Coeur d'Alene, ID 83814

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2 XV. OPPORTUNITY TO CONFER

3 47. Within five days after issuance of this Order, Respondent may make a written request for
4 a conference with EPA. Any such conference shall be held within five days prior to the effective
5 date of this Order, unless extended by agreement of the parties. At any conference held pursuant to
6 the request, Respondent may appear in person or be represented by an attorney or other
7 representative.

8 48. If a conference is held, Respondent may present any information, arguments, or
9 comments regarding this Order. Regardless of whether a conference is held, Respondent may submit
10 any information, arguments, or comments, in writing, to EPA within five days following the
11 conference or within ten days of issuance of the Order if no conference is requested. This conference
12 is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not
13 give Respondent a right to seek review of this Order.

14 49. Requests for a conference, or any written submittal under this paragraph, shall be
15 directed to:

16 Clifford J. Villa
17 U.S. EPA, Region 10
18 1200 Sixth Avenue, ORC-158
19 Seattle, WA 98101
20 fax (206) 553-0163

21 XVI. ADDITIONAL RESPONSE ACTIONS

22 50. If EPA determines, in consultation with the State and Tribe, that additional response
23 actions not included in this Order are necessary to protect public health, welfare, or the environment,
24 EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days
25 of receipt of notice from EPA that additional removal actions are necessary to protect public health,
26 welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan, including a
27 schedule, for the additional response actions. Upon EPA's approval of the plan, Respondent shall
28 implement the plan for additional response actions in accordance with the provisions and schedule

1 contained therein. This section does not alter or diminish the OSC's authority to make oral
2 modifications to any plan or schedule pursuant to Section XII.

3 XVII. SEVERABILITY

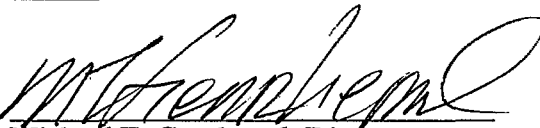
4 51. If a court issues an order that invalidates any provision of this Order or finds that
5 Respondent has sufficient cause not to comply with one or more provisions of this Order,
6 Respondent shall remain bound to comply with all provisions of this Order not invalidated or
7 determined to be subject to a sufficient cause defense by the Court's order.

8 XVIII. EFFECTIVE DATE

9 52. This Order shall be effective five days after it is signed below by the Director of
10 the EPA Region 10 Office of Environmental Cleanup, unless a conference is requested as provided
11 herein. If a conference is requested, this Order shall be effective on the fifth day following the day of
12 the conference, unless modified in writing by EPA.

13 IT IS SO ORDERED

14
15 By:


16 Michael F. Gearheard, Director
17 Office of Environmental Cleanup
18 Region 10
19 U.S. Environmental Protection Agency

Date:

August 31, 1999